IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2205 OF 1999

Dattatray Sadhasiv Khade .. Petitioner
Versus
R.K.Shirke and Ors. .. Respondents

Mr.Machindra Patil for petitioner
Mr.S.S.Patwardhan for respondent Nos. 2 and 3.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 22nd November 2005.

P.C.

. Petitioner is aggrieved by an order passed by Chief Judicial Magistrate, First Class, Pandharpur below Exh.30-31 in R.C.C. Suit No.133 of 1996.

2. Petitioner is original complainant. He states that a complaint was filed by him in the aforesaid court for several offences. He states

that the complaint is that the father of petitioner as well as the uncle of respondent No.2 are joint owners of immovable property. It is his case that the property was earlier exclusively belonging to one Dagdu Tatya Khade, uncle of respondent No.2. It is alleged that the said Dagdu Tatya expired on 3rd October 1987. At the time of his death, he was a unmarried. After his death, names of father of complainant and respondent No.2 appeared in record of rights. However, when the petitioner approached the authorities for a copy of 7/12 extract pertaining to the said property, he discovered that his father's name is deleted from the record of rights and property is shown as standing in the name of second respondent exclusively. Upon enquiries being made with regard to the said deletion, he was informed by the first respondent that a statement was recorded of Dagdu Tatya and that is how the name of father of petitioner came to be deleted. Upon further enquiries and

investigation, it is alleged that petitioner realised that second respondent appeared before the authorities and projected himself as Dagdu Tatya and his statement was recorded by the authorities which is referred to in the complaint and on the basis of the said statement, further action of deleting name of petitioner's father was initiated and completed. It is, therefore, alleged that the first respondent in collusion with respondent Nos. 2 and 3 have recorded a false statement of a deceased person and on that basis, effected changes in the entries in the record of rights. The complaint alleges offences of collusion and preparation of false statement and documents as well as orders and entries by first respondent Tenancy Aval Karkoon as well as second and third respondent. Petitioner original complainant alleges that despite person having expired his statement was recorded on the basis that he is alive and relying upon such statement, false and bogus as well as forged record is

created with respect to the said property. It is on the basis of this allegation that the complaint alleges offence punishable under section 420, 474, 471, 193, 209, 464, 466, 468 and 34 of I.P.C. It appears from the record that upon process being issued an application was made for discharge by respondent No.2. That application has been allowed by the order impugend in the present petition.

3. With the assistance of Mr.Patil appearing in support as well as Mr.Patwardhan for respondent Nos. 2 and 3 I have perused the impugned order. In my view, application for discharge filed by second respondent ought to have been scrutinised and dealt with by the learned Judge in accordance with law. Learned Judge ought to have been aware that at this stage, he has to take the allegations in the complaint and on the basis of demurer consider the pleas. He is not required to consider other

aspects moreso, whether remedies under civil law are available to parties or not. The manner in which the said application has been dealt with is totally unsatisfactory.

4. However, the right of second respondent to apply for discharge need not be jeopardised completely and considering the fact that the matter is pending in this court for the last five years, interest of justice would be served if the application made by the second respondent is restored to file of the Judicial Magistrate for being dealt with afresh and in accordance with law, uninfluenced by the observations made in the earlier order.

5. The said application to be heard and decided within a period of four weeks from the date of receipt of a copy of this order. Petition disposed of in the above terms. All contentions are kept open. Needless to state

that I have not expressed any opinion on the merits of the controversy and all contentions of both sides are expressly kept open.

(S.C.DHARMADHIKARI, J)